

Indiana Public Defender Commission Meeting Minutes

March 26, 2008

Chairman Mark Rutherford called the business meeting to order at 2:07 p.m. Commission members in attendance were David Hensel, Bettye Lou Jerrel, Peter D. Nugent, Sen. Joseph C. Zakas, Rep. Amos Thomas and Rep. Phil Hoy. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Sen. Timothy S. Lanane and Susan Carpenter.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Marion County Public Defender Agency's Chief Counsel, Vicki Ursulskis, and Chief Financial Officer, Deborah Green, and Madison County's Supervising Public Defender, David Happe.

Presentation to Judge Daniel F. Donahue: On behalf of the Public Defender Commission, Bettye Lou Jerrel made a presentation to Judge Daniel F. Donahue honoring him for 12 ½ years of service to the Commission. Judge Donahue's term as a Commission member expired in February 2008. Ms. Jerrel asked that the following biography of Judge Donahue be read into the minutes.

Judge Donahue graduated with an A.B. degree from John Carroll University in 1962. He entered military service in September of 1964 as a Second Lieutenant and served through September of 1966. Upon his release from service, Judge Donahue went to work as a security analyst for the then Commonwealth Life Insurance Company. He attended the University of Louisville School of Law at night and received his Jurist Doctorate Degree on June 8, 1969. After graduation, he left his employment and opened an office for the practice of law in Charlestown, Indiana. In the spring of 1970, he campaigned as a democrat for the primary nomination as prosecuting attorney. Shortly thereafter he was elected chairman of the Clark County Democrat Party and served for two years. In that capacity, he called for open primary elections where people were not "slated" by the party. Judge Donahue served as prosecuting attorney from 1971 through 1982. He became Clark County's first full time prosecutor, a position he advocated while serving on the board of directors of the Indiana Prosecuting Attorney's Council. In 1975 and 1976, he served as chairman of the board.

From 1983 through 1986, Judge Donahue practiced law in Jeffersonville. In 1986 he stood for election as Judge of the Clark Circuit Court and will have served in that capacity for twenty-two and one-half years when he retires in June of 2008. From 1991 through 2000, he served on the board of directors of the Indiana Judicial Conference and became the first chairman of the Domestic Relations Committee, which was organized in 1995. He served through 2003 and was the primary influence behind the adoption of the Indiana Parenting Time Guidelines giving parents, generally fathers, more parenting time with their children and also recognizing the financial costs of parenting.

Judge Donahue is a graduate of the Indiana Judicial College and the Indiana Graduate Program for Judges. He served on the Indiana Supreme Court Committee on Character and Fitness and is also a fellow of the Indiana Bar Foundation and a member of the Judicial Administration Committee of the Indiana Judicial Conference. In 1999, Judge Donahue

was the leading force behind the creation of the Sherman Minton American Inn of Court and served as president of the organization through 2000. Judge Donahue was a participant in the 1995 Class of Leadership Southern Indiana and became a member of its board of directors serving through 2002. He was program chair of the organization in 2000 and became its chairman in 2001. He has been a member of the Jefferson Rotary since 1987.

Meeting Minutes: Chairman Rutherford presented the minutes from the December 12, 2007 meeting for approval. Peter Nugent moved for approval of the minutes as presented and Sen. Joseph Zakas seconded the motion. The vote was unanimous in favor of approval.

Financial Status of Public Defense Fund: Deborah Neal reported that the amount available in the Public Defense Fund to pay claims is \$3,224,705.72. After payment of the 4th Quarter 2007 capital and non-capital claims, the Public Defense Fund will have a remaining balance of \$8,996.81.

Ms. Neal also informed the Commission that Marion County Public Defender Agency (“MCPDA”) recently admitted an error in their expense reporting for the past eight quarters. MCPDA added capital expenses to non-capital expenses in the quarterly requests for reimbursement. Deborah Neal calculated that MCPDA received overpayment of \$210,396.91, and that amount has been deducted from MCPDA’s 4th quarter reimbursement request.

Deborah Neal reported that, due to insufficient funds, the non-capital claims would have to be prorated at 33.85% for the 4th quarter 2007. Senator Zakas asked what was the lowest pro rata the Commission had to make. Ms. Neal reported it was 18.3% for the 4th quarter of 2006. Bettye Lou Jerrel asked if the Commission staff ever notifies the county public defender boards and auditors when there is a shortage in the Public Defender Fund and pro rating will be necessary. Deborah Neal said that letters were sent to the counties when the non-capital claims were prorated at 18.3% in the spring of 2007. She also reported that consideration has been given to creating an electronic newsletter about the Public Defender Commission, and this would be an ideal forum to distribute information.

Capital and Non-Capital Expense Summary: The Commission reviewed the analysis of the Public Defense Fund appropriations and expenses prepared by Deborah Neal, and a five-year projection created with the base fiscal year of 2006-2007 to compare with actual expenses paid so far in FY 2007-2008. David Hensel inquired if the 12.5% projected increases the Public Defense Fund needs compares with the historical increases the Fund has received from the legislature. Larry Landis said generally the Fund receives an increase of between 10% and 14% and when you consider the initial funding was \$650,000, these are big increases. Historically, these increases are always a “catch up” game.

For analysis of capital expenses, the staff distributed summaries of expenses in death penalty cases since the beginning of the Fund: One list is by county and one by defendant.

Approval of 2007 Florida Death Penalty Seminar for CR24 Requirements: The Commission considered for approval the Florida Association of Criminal Defense Lawyers’ death penalty seminar presented February 16-17, 2007, for purposes of Criminal Rule 24’s required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel. David Hensel made the motion to approve the 2007 Florida Death Penalty Seminar for CR24 requirements. Peter Nugent seconded the motion and the motion passed unanimously.

State v. Wilkes:

The Vanderburgh County capital case, *State v. Wilkes*, is on track to exceed the cost of the most expensive capital case to date, the *Stevenson* case. Bettye Lou Jerrel commented that the Vanderburgh County Council is up in arms about the high defense costs in *Wilkes*. Jeff Wiese reported the case has moved into the appeal phase and he learned the names of the two appellate attorneys from a newspaper article. He checked to ensure they are qualified pursuant to CR24 requirements and discovered the lead appellate attorney, John Goodridge, does not have the 12 hours of Commission approved death penalty CLEs. He does have 11.7 hours from an approved course and 12 hours from a non-approved course. Jeff Wiese presented a course schedule and biographies of the presenters at the 2007 Federal Capital Defense Strategy Session, Baltimore, Maryland, held November 9, 2007, that Mr. Goodridge attended, for CR24 qualification and approval by the Commission. Phil Hoy made the motion to approve this course for CR24 requirements. Joseph Zakas seconded the motion. The motion passed unanimously. Both Phil Hoy and Larry Landis asked staff to inform the attorney and the judge involved of the action the Commission took and remind them about the requirements of CR24 and that violations of CR24 could jeopardize reimbursements from the Public Defense Fund.

Request from Marion County for an Exception to Standard N:

Marion County contacted Deborah Neal about a potential public defender they are considering hiring to handle appeals. This potential employee does not have the 3 years experience the standard requires to handle murder and A and B felonies. He does have 18 years of experience clerking for a judge and 1-½ years of criminal experience. Bettye Lou Jerrel said what we are deciding is whether to stick to our rules or make an exception. Mark Rutherford said it is obvious the Commission did not consider this situation when it drafted Standard N. On behalf of Marion County, Deb Green and Victoria Ursulkis withdrew this request. Mark Rutherford said perhaps we should examine this Standard at a future meeting to see if changes should be made.

Requests for 50% Reimbursement in Capital Cases: The commission addressed claims for 50% reimbursement in capital cases as follows:

Reimbursement Requests in Capital Cases			
March 26, 2008			
COUNTY	DEFENDANT		TOTAL
Allen	Rios		\$12,293.85
Fulton	Baker		\$569.10
Marion	Allen		\$9,514.42
	Allen 2		\$11,379.05
	Turner		\$34,529.31
	Voss		\$2,912.00
Parke	Cottrell*		\$7,631.90
Spencer	Ward**		\$7,486.74
Vanderburgh	Wilkes***		\$53,124.75
TOTAL			\$139,441.12

* Cottrell reduced by \$277.50 for charges not related to public defense		
** Ward reduced by \$5,071.23 for untimely filing of claim		
***Wilkes reduced by \$639.51 for charges not related to the capital case		

Peter Nugent made a motion to pay the capital claims as recommended. Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Requests for 40% Reimbursement in Non-Capital Cases:

The Commission addressed the following counties' 4th quarter requests for reimbursement of non-capital expenses. Deborah Neal said the Public Defense Fund balance was not sufficient to reimburse the claims at 40%. The claims were pro rated at 33.85%.

INDIANA PUBLIC DEFENDER COMMISSION							
4 th Qtr (Oct. 1, 2007 - Dec. 31, 2007) Requests for Reimbursements in Non-Capital Cases							
AMENDED 3/26/2008							
COUNTY	Total Expenditure	Adjust For Non-Reimbrs	% Of Adjstmt	Eligible Expenditure	If 40% Reimbursed	Prorated at 33.85%	Loss Due to Prorating
ADAMS	\$72,784.87	\$19,850.42	27%	\$52,934.45	\$21,173.78	\$17,918.31	\$3,255.47
ALLEN	\$714,540.68	\$31,706.18	4%	\$682,834.50	\$273,133.80	\$231,139.48	\$41,994.32
BENTON	\$6,281.25	\$0.00	0%	\$6,281.25	\$2,512.50	\$2,126.20	\$386.30
BLACKFRD	\$19,289.15	\$5,554.75	29%	\$13,734.40	\$5,493.76	\$4,649.09	\$844.67
CARROLL	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
CLARK	\$127,631.51	\$21,099.25	17%	\$106,532.26	\$42,612.90	\$36,061.17	\$6,551.73
CRAWFRD	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
DECATUR	\$32,910.68	\$9,430.55	29%	\$23,480.13	\$9,392.05	\$7,948.02	\$1,444.03
FAYETTE	\$102,771.48	\$24,665.16	24%	\$78,106.32	\$31,242.53	\$26,438.99	\$4,803.54
FLOYD	\$156,814.11	\$28,430.49	18%	\$128,383.62	\$51,353.45	\$43,457.86	\$7,895.59
FOUNTAIN	\$37,396.17	\$9,898.99	26%	\$27,497.18	\$10,998.87	\$9,307.80	\$1,691.07
FULTON	\$56,215.51	\$20,300.05	36%	\$35,915.46	\$14,366.18	\$12,157.38	\$2,208.80
GRANT	\$237,981.00	\$28,473.00	12%	\$209,508.00	\$83,803.20	\$70,918.46	\$12,884.74
GREENE	\$76,085.16	\$11,033.52	15%	\$65,051.64	\$26,020.66	\$22,019.98	\$4,000.68
HANCOCK	\$119,446.85	\$41,247.85	35%	\$78,199.00	\$31,279.60	\$26,470.36	\$4,809.24
HENRY	\$83,613.49	\$11,485.44	14%	\$72,128.05	\$28,851.22	\$24,415.34	\$4,435.88
HOWARD	\$346,305.53	\$54,044.61	16%	\$292,260.92	\$116,904.37	\$98,930.32	\$17,974.05
JASPER	\$66,565.10	\$24,810.63	37%	\$41,754.47	\$16,701.79	\$14,133.89	\$2,567.90
JAY	\$59,090.76	\$12,468.15	21%	\$46,622.61	\$18,649.04	\$15,781.75	\$2,867.29

JENNINGS	\$69,785.27	\$37,496.56	54%	\$32,288.71	\$12,915.48	\$10,929.73	\$1,985.75
KNOX	\$136,404.47	\$34,284.89	25%	\$102,119.58	\$40,847.83	\$34,567.48	\$6,280.35
KSCIUSKO	\$121,571.29	\$36,142.82	30%	\$85,428.47	\$34,171.39	\$28,917.54	\$5,253.85
LAKE	\$935,139.30	\$4,283.08	0%	\$930,856.22	\$372,342.49	\$315,094.83	\$57,247.66
LAPORTE	\$130,001.41	\$27,591.12	21%	\$102,410.29	\$40,964.12	\$34,665.88	\$6,298.24
MADISON	\$368,366.96	\$26,946.59	7%	\$341,420.37	\$136,568.15	\$115,570.80	\$20,997.35
MARION	\$4,656,228.68	\$1,142,474.98	25%	\$3,513,753.70	\$1,405,501.48	\$979,008.72	\$216,095.85
MARTIN	\$15,364.68	\$4,780.62	31%	\$10,584.06	\$4,233.62	\$3,582.70	\$650.92
MIAMI	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
MONROE	\$331,955.84	\$48,578.90	15%	\$283,376.94	\$113,350.78	\$95,923.09	\$17,427.69
MNTGMRY	\$115,162.04	\$32,922.01	29%	\$82,240.03	\$32,896.01	\$27,838.25	\$5,057.76
NEWTON	\$0.00	\$0.00	0%	\$0.00	\$0.00	\$0.00	\$0.00
NOBLE	\$77,002.30	\$13,641.97	18%	\$63,360.33	\$25,344.13	\$21,447.47	\$3,896.66
OHIO	\$13,947.50	\$3,985.00	29%	\$9,962.50	\$3,985.00	\$3,372.31	\$612.69
ORANGE	\$30,518.39	\$6,189.04	20%	\$24,329.35	\$9,731.74	\$8,235.48	\$1,496.26
PARKE	\$28,529.66	\$6,249.35	22%	\$22,280.31	\$8,912.12	\$7,541.88	\$1,370.24
PERRY	\$56,820.00	\$11,981.00	21%	\$44,839.00	\$17,935.60	\$15,178.00	\$2,757.60
PIKE	\$64,003.42	\$16,272.06	25%	\$47,731.36	\$19,092.54	\$16,157.07	\$2,935.47
PULASKI	\$74,640.08	\$29,523.00	40%	\$45,117.08	\$18,046.83	\$15,272.13	\$2,774.70
RUSH	\$46,984.60	\$19,346.60	41%	\$27,638.00	\$11,055.20	\$9,355.46	\$1,699.74
SCOTT	\$84,405.56	\$17,849.20	21%	\$66,556.36	\$26,622.54	\$22,529.33	\$4,093.21
SHELBY	\$81,520.75	\$9,926.53	12%	\$71,594.22	\$28,637.69	\$24,234.64	\$4,403.05
SPENCER	\$31,010.69	\$2,939.25	9%	\$28,071.44	\$11,228.58	\$9,502.18	\$1,726.40
STEUBEN	\$58,659.80	\$13,211.94	23%	\$45,447.86	\$18,179.14	\$15,384.10	\$2,795.04
ST. JOSEPH	\$509,737.29	\$65,451.89	13%	\$444,285.40	\$177,714.16	\$150,390.61	\$27,323.55
SULLIVAN	\$24,942.60	\$12,626.20	51%	\$12,316.40	\$4,926.56	\$4,169.10	\$757.46
SWTZRLN	\$72,128.91	\$28,365.30	39%	\$43,763.61	\$17,505.44	\$14,813.98	\$2,691.46
TIPPECN	\$376,939.61	\$107,975.46	29%	\$268,964.15	\$107,585.66	\$91,044.36	\$16,541.30
UNION	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
VNDRBRG	\$571,240.04	\$106,161.68	19%	\$465,078.36	\$186,031.34	\$157,429.02	\$28,602.32
VERMILLN	\$31,839.78	\$12,129.44	38%	\$19,710.34	\$7,884.14	\$6,671.95	\$1,212.19
VIGO	\$430,349.07	\$72,828.30	17%	\$357,520.77	\$143,008.31	\$121,020.78	\$21,987.53
WABASH	\$42,249.97	\$8,454.50	20%	\$33,795.47	\$13,518.19	\$11,439.77	\$2,078.42
WARREN	\$8,689.91	\$4,693.50	54%	\$3,996.41	\$1,598.56	\$1,352.78	\$245.78
WASHGTN	\$93,979.06	\$10,044.09	11%	\$83,934.97	\$33,573.99	\$28,411.99	\$5,162.00
WELLS	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
WHITE	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00

WHITLEY	\$45,056.01	\$10,053.82	22%	\$35,002.19	\$14,000.88	\$11,848.24	\$2,152.64
TOTAL	\$12,050,898.24	\$2,339,899.73	19%	\$9,710,998.51	\$3,884,399.39	\$3,076,776.05	\$807,623.34
NOTE:	Marion Co.'s request reduced due to error mixing capital/non-capital expenses in 4th qtr. 07.						
	Marion Co.'s non-cap. Expenses amended from \$4,754,993.69 to \$4,656,228.68.						
	After prorating at 33.85%, Marion Co. had additional amount of \$210,396.91 subtracted due to						
	error (adding cap. exp. to non-cap. exp.) for past seven quarters.						

Peter Nugent made a motion to pay the non-capital claims as recommended and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Status of Compliance Issues in Counties Given 90-Day Notice:

Deborah Neal said that when a county received a 90-day Notice, it was in the middle of a budget year and few changes could be made to reach compliance; the 1st quarter 2008 request should be more informative regarding compliance. At the next meeting of the Commission, the staff will provide a detailed status report.

Task Force to Study Indigent Defense in Indiana:

Deborah Neal gave a short history of the proposal to study indigent defense in Indiana. The Commission is anticipating a response from Chief Justice Shepherd regarding a task force for this project.

Indiana Public Defender Council – Larry Landis:

Larry Landis reported that the Council has analyzed each county's spending on indigent defense. The information is necessary should the state legislature need to know the costs of a state supported public defense program for all counties as recommended by the Shepherd/Kernan task force. The total cost per year of public defense for all 92 counties is approximately \$60 million. There is also data on public defender caseloads. Mr. Landis reported that public defenders are saying their caseloads keep increasing. The Council can show that there is no increase in the crime rate. Case filings are not up except for D felonies. It appears case loads are increasing because of a trend to appoint public defenders more often. It is possible this trend is starting now that each individual court no longer covers the cost of public defense. The Commission might want to consider creating some screening mechanism to determine if a public defender is needed or a mechanism that requires the defendant to pay back some or all of the public defense costs. Many states have an active pre-trial services agency to conduct an investigation of the defendant's finances to determine if a public defender is required.

With no further business to discuss, Peter Nugent made a motion to adjourn the meeting and David Hensel seconded. The motion passed unanimously and Mark Rutherford closed the meeting at 3:25 PM. The next Commission meeting will be held on June 25, 2008 at 2:00 PM.

Mark Rutherford, Chairman

Date